

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

In the matter of:

City of Worcester, Massachusetts

Respondent.

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. CWA-01-2006-0084

CONSENT AGREEMENT

STATUTORY AUTHORITY

1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(g), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," at 40 C.F.R. Part 22 ("Part 22 Rules").

2. Pursuant to 40 C.F.R. § 22.13(b), the parties agree to simultaneously commence and conclude this action by the issuance of this CAFO.

3. For purposes of this CAFO, the City of Worcester, Massachusetts ("Respondent" or "City") admits that jurisdiction exists for the entry of this CAFO and execution of the related final order.

4. Respondent neither admits nor denies the specific legal assertions and factual allegations contained in this CAFO.

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5. The Respondent consents to the assessment of an administrative penalty set forth herein.

6. The parties agree, without adjudication or admission of facts or law, that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order without further litigation is an appropriate resolution of the dispute, and the parties consent to the entry of this Consent Order.

REQUIRED NOTICE

7. Pursuant to Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and in accordance with 40 C.F.R. § 22.38(b), the EPA warrants and represents that the Commonwealth of Massachusetts has been given an opportunity to consult with EPA regarding the assessment of the administrative penalty against Respondent.

8. Section 309(g)(4)(A) of the Act, 33 U.S.C. 1319(g)(4)(A), provides that, prior to issuing an order assessing a penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA must provide public notice of, and reasonable opportunity to comment on, the proposed issuance of such order. EPA warrants and represents that it shall satisfy this requirement for notice by providing public notice of, and reasonable opportunity to comment on, this Consent Agreement prior to the issuance of the Final Order.

EPA's FACTUAL ALLEGATIONS

9. Respondent is a "person" as defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5).

10. The Respondent owns and operates a wastewater collection system located in Worcester, Massachusetts.

11. On November 8, 1990, the Director of the Water Management Division of EPA, Region I, under the authority given to the Administrator of EPA by Section 402 of the Act, 33 U.S.C. § 1342, issued to Respondent National Pollutant Discharge Elimination System ("NPDES") Permit No. MA0102997 (the "Permit"). The Permit became effective on December 8, 1990, and expired at midnight on November 7, 1995. In accordance with 40 C.F.R. § 122.6, the NPDES Permit remained fully effective and enforceable until EPA reissued the permit on June 2, 2005. The reissued permit will expire on July 30, 2010.

12. Part 1.A. of the Permit authorizes the City to discharge treated combined sewage to the Mill Brook Storm Drain to the Blackstone River during wet weather conditions from an outfall which the Permit identifies as Outfall 001. The Permit does not authorize any other discharges from any other discharge point to any other location.

13. Section 301(a) of the Act, 33 U.S.C. § 1311(a), makes unlawful the discharge of pollutants to waters of the United States except in compliance with, among other things, the terms and conditions of an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

14. Without authorization to do so, on numerous occasions since at least January 1, 2000, the City of Worcester has discharged untreated sewage from various components of its wastewater collection system other than Outfall 001 to various surface waters, including the Blackstone River, Lake Quinsigamond, and tributaries thereto.

15. The components of the City's wastewater collection system other than Outfall 001 from which the City has discharged untreated sewage to various surface waters are point sources within the meaning of Section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14).

16. Untreated sewage contains "pollutants," as defined in Section 502(6) of the Act, 33 U.S.C. § 1362(6).

17. The surface waters to which the City has discharged untreated sewage, including the Blackstone River, Lake Quinsigamond, and the tributaries thereto, are all "waters" of the United States as defined in 40 C.F.R. § 122.2 and are, therefore, "navigable waters" as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7).

18. Respondent's unauthorized discharges of pollutants to the various waters of the United States, including the Blackstone River, Lake Quinsigamond, and tributaries thereto from components of the City's wastewater collection system other than Outfall 001 have occurred in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

Terms of Settlement

19. The parties have agreed to a settlement on the following terms. In agreeing to the following penalty, EPA has taken into account the statutory penalty factors at Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3).

Payment of Penalty

20. Respondent shall pay a penalty of one hundred twenty-five thousand dollars (\$125,000) for those past violations of the Act specifically alleged in the preceding Paragraphs.

21. Within thirty (30) days of the effective date of this CAFO, Respondent shall submit a cashier's or certified check, payable to the order of "Treasurer, United States of America" and referencing the title and docket number of the action, in the amount specified in the preceding Paragraph to:

EPA Region 1
P.O. Box 360197M
Pittsburgh, Pennsylvania 15251

Respondent shall note on the check the title and docket number of this case.

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22. Respondent shall simultaneously submit copies of the penalty payment check to:

Wanda Rivera
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region I
One Congress Street, Suite 1100, RAA
Boston, MA 02114-2023

and

Michael Wagner
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I
One Congress Street, Suite 1100, SEL
Boston, MA 02114-2023

General Provisions

23. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), a failure by the Respondent to pay the penalty assessed by this CAFO in full by its due date shall subject the Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates from the date of this CAFO. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(d), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

24. The penalty specified in Paragraph 23, above, shall represent a civil penalty assessed by EPA and shall not be deductible for purposes of Federal taxes.

25. Respondent waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in this CAFO.

26. The provisions of this CAFO shall be binding upon Respondent, its agents, successors and assigns.

27. Each party shall bear its own costs and attorneys fees in this proceeding.

28. Issuance of this CAFO constitutes a full and complete settlement by EPA of all claims for judicial or administrative civil penalties pursuant to Sections 309(d) or (g) of the Act, 33 U.S.C. §§ 1319(d) or (g), for all past violations of the Act specifically alleged herein.


29. Issuance of this CAFO does not constitute a settlement by EPA of its right to enforce the substantive legal requirements underlying this administrative penalty assessment, whether administratively or judicially, pursuant to Sections 309(a), (b) and (c) of the Act, 33 U.S.C. §§ 1319(a), (b), and (c), or Section 504 of the Act, 33 U.S.C. § 1364.

30. This CAFO does not constitute a waiver, suspension or modification of the requirements of the Act, 33 U.S.C. §§ 1251 et seq., or any regulations promulgated thereunder.

31. The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to enter into the terms and conditions of this CAFO and legally bind Respondent.


STIPULATED AND AGREED:

RESPONDENT
City of Worcester


Michael V. O'Brien,
City Manager
City of Worcester

Dated: 8/1/06

U.S. ENVIRONMENTAL PROTECTION AGENCY


Stephen S. Perkins, Director
Office of Environmental Stewardship
U.S. EPA, Region 1

Dated: SEPT 25, 2006

FINAL ORDER

32. Pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B) and in accordance with 40 C.F.R. Part 22, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

33. The Respondent is ordered to comply with the terms of the referenced Consent Agreement. This Consent Order shall become effective 30 days from today.

U.S. ENVIRONMENTAL PROTECTION AGENCY


Sharon Wells, Regional Judicial Officer
U.S. EPA, Region 1

11/15/06
Date

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